

Enforcement sensitive: Not for Release Under FOIA

## **TSCA PCB Enforcement Discretion -**

### **1. How many exemptions from TSCA(6)(e) PCB requirements has FFEO (or predecessor EPA authority) given?**

In the last 10 years a total of 5 non-R&D exemption petitions have been filed: two have been granted and 3 are pending.

Three exemption requests have come from DLA: 1) Japan import, granted 2003, 2) Wake Island import, granted 2003, 3) and a second Japan import petition, Notice of Proposed Rule-Making (NPRM) proposing to grant the exemption pending.

One request from MARAD in July 2004 to export to UK...still waiting for necessary permits before we will publish a NPRM, if ever.

One from Veolia in November 2006 to import from Mexico, NPRM pending (decision unknown)

### **2. Is a formal rule-making the only mechanism available to get an exemption from TSCA 6(e) PCB requirements OR can EPA exercise its "No enforcement assurance" for these requirements in an Enforcement Discretion Letter?**

An exemption can only be granted by rule. Exemption rule-makings are done by OPPT. Under existing law, an exemption under TSCA (6)(e)(3) remains in effect only for one year. The current rule-making process takes about two years to complete because of information needs and public comment requirements, so federal agencies have often requested that EPA exercise enforcement discretion to avoid this process.

Based on various circumstances, FFEO has either issued letters of enforcement discretion (EDLs) or entered into agreements to allow the transfer of property or equipment containing regulated quantities of PCBs. Exercises of enforcement discretion are generally open ended, but subject to conditions

#### **Exemption 7(e)**

They are also subject to existing EPA policy [Processing Requests for Use of Enforcement Discretion, March 3, 1995; Policy Against "No Action" Assurances, November 16, 1984.]

# Exemption 7(e)

## **EDLs/Agreements for continued use:**

- FFEO has entered into about seven three-party agreements (EPA/Navy/transferee) to allow decommissioned Navy vessels to be used as museums. These agreements typically require substantial sampling, cleanup, health and safety and reporting requirements and also require that, if the transferee cannot properly dispose of the vessel at the end of its use, it will revert to the Navy for disposal.

- FFEO entered into an agreement with DOE to allow the continued use of facilities in which duct gaskets and hydraulic systems are contaminated with PCBs at the Paducah and Portsmouth Gaseous Diffusion Plants and Oak Ridge.

- FFEO issued an EDL to DOE which allowed DOE's SRS plant to transfer 14 pieces of surplus manufacturing equipment coated with PCB paint to South Carolina and Oklahoma for continued use.

- FFEO issued an EDL was issued to the Naval Air Warfare Center of Indianapolis to allow the transfer of buildings contaminated with PCB paint to City of Indianapolis for redevelopment.

- EPA Region 9 entered into an with the Navy, Lennar, Mare Island, the City of Vallejo and the State of California to allow the transfer of the Mare Island Naval Shipyard (CA.) contaminated with PCB paint for redevelopment.

- FFEO issued EDLs to transfer one Coast Guard and one NOAA vessel for continued use as vessels. Region 5 issued an EDL allowing the transfer of several vessels for use in the Great Lakes.

**EDLs for Disposal:**

- FFEO issued an EDL to MARAD to allow the export of 13 vessels for disposal in the UK. Because of permit problems in the UK and litigation to stop the export both here and in the UK, 4 vessels remain in the UK not scrapped and the remaining vessels have not been sent.

- FFEO issued an EDL to Navy to allow the import of PCBs from Japan for disposal in the US. US ports refused to allow the PCBs to be unloaded and they were sent to a PCB disposal facility in Canada. Canada refused entry and the shipments were subsequently sent to Wake Island while DoD filed a petition for an exemption by rule to bring the material into the US for disposal.

**Regarding the 1997 EPA Agreement with the Navy -**

## **Exemption 5 - Deliberative Process Privilege**

# Exemption 5 - Deliberative Process Privilege